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Error
to Supreme
Court of
North Carolina

Justice Clifford.

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 413.

KENNETH H. WORTHY, PLAINTIFF IN ERROR,

vs.

JOHN A. BARRETT, WESLEY F. SEWELL, CALVIN H. SMITH, JOHN RITTER, AND ABSALOM KELLY, COMMISSIONERS OF THE COUNTY OF MOORE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED JANUARY 3, 1870.

Bill in equity in District
Court of the United States for Western
District of Missouri and
Northern Division —
Demurrer to Bill filed
by Appellee —
Decree entered 1st
February 1915 dismissing
Bill and Appellant
prosecutes this
Appeal —

# SUPREME COURT OF THE UNITED STATES.

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vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

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1 UNITED STATES OF AMERICA:

The President of the United States to the honorable the chief justice and the associate justices of the supreme court of the State of North Carolina, greeting:

Because in the record & the proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law of the said State in which a decision could be had in the said suit between Kenneth H. Worthy, of the county of Moore, in the said State, and John Ritter, Jno. A. Barrett, Wesley F. Seawell, C. H. Smith, & Absalom Kelly, commissioners for the said county, wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the right specially claimed under such clause of the said Constitution, a manifest error hath happened to the great damage of the said Kenneth H. Worthy, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, & full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly & openly,

2 you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then & there held, that, the record & proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws & custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this 27th day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

N. J. RIDDICK,
*Clerk U. S. Circuit Court.*

Allowed by—

R. M. PEARSON, *Ch. J. S. C.*

3 The United States of America greeting to John A. Barrett, Wesley F. Seawell, Calvin H. Smith, John Ritter, and Absalom Kelly, commissioners of the county of Moore:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of North Carolina, wherein Kenneth H. Worthy is plaintiff in error and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. M. Pearson, chief justice of the supreme court of North Carolina, this the 19th day of September, in the year of our Lord one thousand eight hundred and sixty-nine.

R. M. PEARSON, *Ch. J. S. C.*

4 On this 1st day of November, in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared S. W. Seawell, before me, the subscriber, A. H. McNeill, clerk superior court,

and makes oath that he delivered a true copy of the within citation to John A. Barrett, Wesley F. Seawell, Calvin H. Smith, & John Ritter on 9th October, 1869, while in session.

S. W. SEAWELL, *Coroner.*

Sworn to and subscribed before me 1st Nov., 1869.
[SEAL.] A. H. McNEILL, *C. S. C*

NOVEMBER 1ST, 1869.

NORTH CAROLINA, *Moore County:*

On this day personally appeared before me, A. H. McNeill, clerk of superior court for said county, S. W. Seawell, coroner of Moore County, and made oath that he delivered a true copy of the foregoing citation to John A. Barrett, chairman of board of county comissioners for said county, upon 9th day of Oct'r, 1869, while the board was in session as a board doing business.

S. W. SEAWELL, *Coroner.*

Sworn to & subscribed 1st Nov., 1869.
[SEAL.] A. H. McNEILL, *C. S. C.*

5 In the supreme court of North Carolina.

CLERK'S OFFICE, , 1869.

On this day of , in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared before me the subscriber, W. H. Bagley, clerk of said court, and makes oath that he delivered a true copy of the within citation to , commissioners of the county of Moore, upon the day of , A. D. 1869.

(Indorsed:) Kenneth H. Worthy, plaintiff in error, vs. John A. Barrett, Wesley F. Seawell, Calvin H. Smith, John Ritter, & Absalom Kelly, def'ts in error. Citation.

To hand 9th Oct. 1869.

S. W. SEAWELL, *Coroner.*

Executed by delivering a copy of the within to J. A. Barrett, chairman of board of comissioners in said county, on 9th Oct., 1869, while in session doing business.

S. W. SEAWELL, *Coroner.*

6 Know all men by these presents, that we, Kenneth H. Worthy and Thomas B. Harris, the latter being of Chatham County, North Carolina, are held & firmly bound to the commissioners of the county of Moore, in the State of North Carolina, who are now in office, in the full & just sum of five hundred dollars, ($500 00,) to be paid to them; to which we bind ourselves, our heirs, executors, &c., jointly and severally, by these presents. Sealed with our seals & dated this 27th day of February, A. D. 1869.

Whereas lately, at a term of the supreme court of North Carolina, & upon the 24th day of February, 1869, in a suit depending in said court between Kenneth H. Worthy & the said commissioners of Moore County, in a petition for a mandamus prosecuted at the instance of said Worthy, judgment dismissing said petition was rendered against said

Worthy, and the said Worthy having obtained a writ of error into the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said supreme court of North Carolina, to
7 reverse the judgment in said suit, & a citation directed to said commissioners citing & admonishing them to be & appear at a Supreme Court of the United States to be holden at Washington the 1st Monday of December next:

Now the condition of the above obligation is such, that if the said Kenneth H. Worthy shall prosecute the said writ of error to effect, & answer all damages & costs if he shall fail to make his said plea good, then the above obligation to be void; else to remain in full force & virtue.

K. H. WORTHY. [SEAL.]
T. B. HARRIS. [SEAL.]

Sealed & delivered in presence of—
WM. H. BAGLEY.

The above bond is substituted for the one signed S. F. Phillips.
W. H. BAGLEY, *Clerk.*

8 KENNETH H. WORTHY
*against*
JOHN A. BARRETT, WESLEY F. SEAWELL, Calvin H. Smith, commissioners of Moore County.

STATE OF NORTH CAROLINA, *ss:*

In the supreme court of North Carolina begun and held at the capitol in the city of Raleigh, on the first Monday in January, in the year of our Lord one thousand eight hundred and sixty-nine, before the Honorable Richmond M. Pearson, chief justice, and the Honorable Edwin G. Reade, Honorable William B. Rodman, Honorable Robert P. Dick, and the Honorable Thomas Settle, associates justices of the same court:

Be it remembered that heretofore, to wit, on the 10th day of November, A. D. 1868, there was filed in the office of the said court, the transcript of an appeal from the superior court of Moore County, in the words & figures following, that is to say:

9 STATE OF NORTH CAROLINA:

Be it remembered that at a superior court of law opened and held for the county of Moore, at the court-house in Carthage, on the 2d Monday after the 2d Monday in August, A. D. 1868, it being the 24th day of said month—present and presiding, his hon. R. P. Buxton, judge—the following petition was duly presented to said court:

North Carolina, Moore County, superior court.—Fall term, 1868.

To the Honorable Ralph P. Buxton, judge:

The petition of Kenneth H. Worthy, sheriff elect for the county of Moore, would respectfully show that he was duly elected sheriff of said county at the late election held for said county on the 21st, 22d, and 23d days of April, 1868, as will appear from the certificate of General Ed. R. S. Canby, herewith exhibited.

10 Your petitioner would further show that at the same time, John Ritter, Absalom Kelly, Wesley F. Sewell, John A. Barrett,

and makes oath that he delivered a true copy of the within citation to John A. Barrett, Wesley F. Seawell, Calvin H. Smith, & John Ritter on 9th October, 1869, while in session.

S. W. SEAWELL, *Coroner.*

Sworn to and subscribed before me 1st Nov., 1869.
[SEAL.] A. H. McNEILL, *C. S. C*

NOVEMBER 1ST, 1869.

NORTH CAROLINA, *Moore County:*

On this day personally appeared before me, A. H. McNeill, clerk of superior court for said county, S. W. Seawell, coroner of Moore County, and made oath that he delivered a true copy of the foregoing citation to John A. Barrett, chairman of board of county comissioners for said county, upon 9th day of Oct'r, 1869, while the board was in session as a board doing business.

S. W. SEAWELL, *Coroner.*

Sworn to & subscribed 1st Nov., 1869.
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5 In the supreme court of North Carolina.

CLERK'S OFFICE, , 1869.

On this day of , in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared before me the subscriber, W. H. Bagley, clerk of said court, and makes oath that he delivered a true copy of the within citation to , commissioners of the county of Moore, upon the day of , A. D. 1869.

(Indorsed:) Kenneth H. Worthy, plaintiff in error, vs. John A. Barrett, Wesley F. Seawell, Calvin H. Smith, John Ritter, & Absalom Kelly, def'ts in error. Citation.

To hand 9th Oct. 1869.

S. W. SEAWELL, *Coroner.*

Executed by delivering a copy of the within to J. A. Barrett, chairman of board of comissioners in said county, on 9th Oct., 1869, while in session doing business.

S. W. SEAWELL, *Coroner.*

6 Know all men by these presents, that we, Kenneth H. Worthy and Thomas B. Harris, the latter being of Chatham County, North Carolina, are held & firmly bound to the commissioners of the county of Moore, in the State of North Carolina, who are now in office, in the full & just sum of five hundred dollars, ($500 00,) to be paid to them; to which we bind ourselves, our heirs, executors, &c., jointly and severally, by these presents. Sealed with our seals & dated this 27th day of February, A. D. 1869.

Whereas lately, at a term of the supreme court of North Carolina, & upon the 24th day of February, 1869, in a suit depending in said court between Kenneth H. Worthy & the said commissioners of Moore County, in a petition for a mandamus prosecuted at the instance of said Worthy, judgment dismissing said petition was rendered against said

Worthy, and the said Worthy having obtained a writ of error into the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said supreme court of North Carolina, to
7 reverse the judgment in said suit, & a citation directed to said commissioners citing & admonishing them to be & appear at a Supreme Court of the United States to be holden at Washington the 1st Monday of December next:

Now the condition of the above obligation is such, that if the said Kenneth H. Worthy shall prosecute the said writ of error to effect, & answer all damages & costs if he shall fail to make his said plea good, then the above obligation to be void; else to remain in full force & virtue.

K. H. WORTHY. [SEAL.]
T. B. HARRIS. [SEAL.]

Sealed & delivered in presence of—
WM. H. BAGLEY.

The above bond is substituted for the one signed S. F. Phillips.
W. H. BAGLEY, *Clerk.*

8 KENNETH H. WORTHY
*against*
JOHN A. BARRETT, WESLEY F. SEAWELL, Calvin H. Smith, commissioners of Moore County.

STATE OF NORTH CAROLINA, *ss:*

In the supreme court of North Carolina begun and held at the capitol in the city of Raleigh, on the first Monday in January, in the year of our Lord one thousand eight hundred and sixty-nine, before the Honorable Richmond M. Pearson, chief justice, and the Honorable Edwin G. Reade, Honorable William B. Rodman, Honorable Robert P. Dick, and the Honorable Thomas Settle, associates justices of the same court:

Be it remembered that heretofore, to wit, on the 10th day of November, A. D. 1868, there was filed in the office of the said court, the transcript of an appeal from the superior court of Moore County, in the words & figures following, that is to say:

9 STATE OF NORTH CAROLINA:

Be it remembered that at a superior court of law opened and held for the county of Moore, at the court-house in Carthage, on the 2d Monday after the 2d Monday in August, A. D. 1868, it being the 24th day of said month—present and presiding, his hon. R. P. Buxton, judge—the following petition was duly presented to said court:

North Carolina, Moore County, superior court.—Fall term, 1868.

To the Honorable Ralph P. Buxton, judge:

The petition of Kenneth H. Worthy, sheriff elect for the county of Moore, would respectfully show that he was duly elected sheriff of said county at the late election held for said county on the 21st, 22d, and 23d days of April, 1868, as will appear from the certificate of General Ed. R. S. Canby, herewith exhibited.

10 Your petitioner would further show that at the same time, John Ritter, Absalom Kelly, Wesley F. Sewell, John A. Barrett,

and makes oath that he delivered a true copy of the within citation to John A. Barrett, Wesley F. Seawell, Calvin H. Smith, & John Ritter on 9th October, 1869, while in session.

S. W. SEAWELL, *Coroner.*

Sworn to and subscribed before me 1st Nov., 1869.
[SEAL.] A. H. McNEILL, *C. S. C*

NOVEMBER 1ST, 1869.

NORTH CAROLINA, *Moore County:*

On this day personally appeared before me, A. H. McNeill, clerk of superior court for said county, S. W. Seawell, coroner of Moore County, and made oath that he delivered a true copy of the foregoing citation to John A. Barrett, chairman of board of county comissioners for said county, upon 9th day of Oct'r, 1869, while the board was in session as a board doing business.

S. W. SEAWELL, *Coroner.*

Sworn to & subscribed 1st Nov., 1869.
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5 In the supreme court of North Carolina.

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(Indorsed:) Kenneth H. Worthy, plaintiff in error, vs. John A. Barrett, Wesley F. Seawell, Calvin H. Smith, John Ritter, & Absalom Kelly, def'ts in error. Citation.

To hand 9th Oct. 1869.

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Executed by delivering a copy of the within to J. A. Barrett, chairman of board of comissioners in said county, on 9th Oct., 1869, while in session doing business.

S. W. SEAWELL, *Coroner.*

6 Know all men by these presents, that we, Kenneth H. Worthy and Thomas B. Harris, the latter being of Chatham County, North Carolina, are held & firmly bound to the commissioners of the county of Moore, in the State of North Carolina, who are now in office, in the full & just sum of five hundred dollars, ($500 00,) to be paid to them; to which we bind ourselves, our heirs, executors, &c., jointly and severally, by these presents. Sealed with our seals & dated this 27th day of February, A. D. 1869.

Whereas lately, at a term of the supreme court of North Carolina, & upon the 24th day of February, 1869, in a suit depending in said court between Kenneth H. Worthy & the said commissioners of Moore County, in a petition for a mandamus prosecuted at the instance of said Worthy, judgment dismissing said petition was rendered against said

Worthy, and the said Worthy having obtained a writ of error into the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said supreme court of North Carolina, to
7 reverse the judgment in said suit, & a citation directed to said commissioners citing & admonishing them to be & appear at a Supreme Court of the United States to be holden at Washington the 1st Monday of December next:

Now the condition of the above obligation is such, that if the said Kenneth H. Worthy shall prosecute the said writ of error to effect, & answer all damages & costs if he shall fail to make his said plea good, then the above obligation to be void; else to remain in full force & virtue.

K. H. WORTHY. [SEAL.]
T. B. HARRIS. [SEAL.]

Sealed & delivered in presence of—
WM. H. BAGLEY.

The above bond is substituted for the one signed S. F. Phillips.
W. H. BAGLEY, *Clerk.*

8 KENNETH H. WORTHY
*against*
JOHN A. BARRETT, WESLEY F. SEAWELL, Calvin H. Smith, commissioners of Moore County.

STATE OF NORTH CAROLINA, *ss:*

In the supreme court of North Carolina begun and held at the capitol in the city of Raleigh, on the first Monday in January, in the year of our Lord one thousand eight hundred and sixty-nine, before the Honorable Richmond M. Pearson, chief justice, and the Honorable Edwin G. Reade, Honorable William B. Rodman, Honorable Robert P. Dick, and the Honorable Thomas Settle, associates justices of the same court:

Be it remembered that heretofore, to wit, on the 10th day of November, A. D. 1868, there was filed in the office of the said court, the transcript of an appeal from the superior court of Moore County, in the words & figures following, that is to say:

9 STATE OF NORTH CAROLINA:

Be it remembered that at a superior court of law opened and held for the county of Moore, at the court-house in Carthage, on the 2d Monday after the 2d Monday in August, A. D. 1868, it being the 24th day of said month—present and presiding, his hon. R. P. Buxton, judge—the following petition was duly presented to said court:

North Carolina, Moore County, superior court.—Fall term, 1868.

To the Honorable Ralph P. Buxton, judge:

The petition of Kenneth H. Worthy, sheriff elect for the county of Moore, would respectfully show that he was duly elected sheriff of said county at the late election held for said county on the 21st, 22d, and 23d days of April, 1868, as will appear from the certificate of General Ed. R. S. Canby, herewith exhibited.

10 Your petitioner would further show that at the same time, John Ritter, Absalom Kelly, Wesley F. Sewell, John A. Barrett,

and Calvin H. Smith were elected commissioners for said county of Moore, and have duly qualified as such.

Your petitioner further shows that on Wednesday, the 19th day of August, 1868, he appeared before said commissioners, and tendered his bonds as sheriff, with Richard Strut, W. D. Harrington, A. R. Wadsworth, William McLeod, and Alex'r Kelly, as sureties, which bonds are good and sufficient, as he offered to prove by two good witnesses before said commissioners, and asked to be permitted to take the oaths of office prescribed by law.

Your petitioner would further show that said commissioners refused to accept said bonds and allow him to qualify.

Your petitioner therefore prays your honor to grant him the writ of mandamus against said John Ritter, ch'r., John A. Barrett, Wesley
11 F. Seawell, Absalom Kelly, and [and] Calvin H. Smith, commanding them to receive his bonds and allow him to qualify as sheriff, or to appear before your honor and show cause to the contrary, that whatsoever is lawful and right in the premises may done.

And your petitioner will ever pray, &c.

K. H. WORTHY.

Sworn and subscribed before me this 24th day of August, 1868.

A. H. McNEIL, *Clerk.*

This petition, verified by affidavit, being read, it is ordered by the court that a writ of mandamus in the alternative issue to the defendants, commanding each and every of them to receive the official bonds of Kenneth H. Worthy, sheriff elect of Moore County, and qualify him as such, or to appear in this court on Thursday, 27th of August, inst., to show cause to the contrary; also a copy of the petition.

The following is a copy of the writ of mandamus:

12 STATE OF NORTH CAROLINA:

To John Ritter, Absalom Kelly, Wesley F. Seawell, John A. Barrett, and Calvin H. Smith, commissioners of Moore County:

Each and every of you are hereby commanded to receive the official bonds of Kenneth H. Worthy, sheriff elect of Moore County, and qualify him as such, or to appear before his honor R. P. Buxton, judge, in the court-house in Carthage, on Thursday, the 27th of August, 1868, to show cause to the contrary.

Herein fail not.

Witness A. H. McNeill, clerk of our said superior court, at office in Carthage, 24th of August, 1868.

A. H. McNEILL, *C. S. C.*

The coroner will execute this writ.

A. H. McNEILL, *C. S. C.*

To hand 25th of August, 1868.

JOHN K. McDONALD, *Cor.*

Executed by delivering a copy of the within petition and writ to John Ritter, Wesley F. Seawell, Calvin H. Smith, and John A. Barrett.

JOHN K. McDONALD, *Cor.*

13 Absalom Kelly accepts the bonds of Kenneth H. Worthy.

J. K. McDONALD, *Cor.*

*Copy of answer of defendants.*

John Ritter for himself, answering to the writ of mandamus, saith that he was willing at the time the bonds were offered to hear the proof as to the sufficiency of the bonds; and the bonds being good and sufficient he was willing to allow the sheriff elect to qualify if he could take the required oath of office; but the majority overruled him and declined to hear the proof, or to let him qualify. This defendant, further answering, saith he is now willing to accept his bond, and allow Kenneth H. Worthy, sheriff elect, to qualify.

JOHN RITTER.

Sworn and subscribed before me 27th August, 1868.

A. H. McNEILL, *Clerk.*

STATE OF NORTH CAROLINA, *Moore County:*

To the Hon. Ralph P. Buxton, judge:

14 The commissioners of Moore County would respectfully submit the following laws, with other reasons, as a just cause for refusing to accept the bonds of K. H. Worthy as sheriff of Moore County:

1st. We propose to prove that the office of sheriff is an executive office; for which proof we offer, for your honor's consideration, the act of the Congress of the U. S., ratified on the 19th day of July, 1867, and particularly the sixth section of said act.

2d. We propose to show that if K. H. Worthy took an oath of office, as sheriff of Moore County, prior to the rebellion, and afterwards aided in the rebellion, he is not allowed to hold any office, civil or military, under the United States, or any State; for which proof we offer for your honor's consideration the 3d section of the 14th article of the Constitution of the United States.

3d. We propose to show that it is required of all persons to
15 take the iron-clad oath before they qualify as an officer, unless they are pardoned by Congress; for which proof we offer the 9th section of the act of Congress; ratified on the 19th of July, 1867.

4th. We propose to prove that if the laws bann K. H. Worthy, we are not permitted to receive his bonds as sheriff of Moore County; for which proof we offer the act of the general assembly of North Carolina, ratified at the last session of the legislature.

5th. We propose to prove that this matter is with the commissioners of the county; for which proof we offer the constitution of North Carolina, article 4th, & the 30th section.

6th. We propose to prove, by A. H. McNeill and Col. W. B. Richardson, that K. H. Worthy was sheriff before the late rebellion, and that he was also sheriff during said rebellion, and that, by accepting and holding such office during the rebellion, he aided in the rebellion, he gave aid and comfort to the enemies of the United States.

16 7th. We have in our possession all laws and constitutions to which your honor's attention is directed.

August 27th, 1867.

Respectfully,

W. F. SEAWELL.
C. H. SMITH.
J. A. BARRETT.

The return of the commissioners being received, on argument, it is considered by the court that the said return is insufficient, and that a peremptory writ of mandamus issue to the commissioners, commanding them to receive the official bonds of Kenneth H. Worthy, sheriff elect for the county of Moore, and to qualify him as such. From this order the commissioners craved an appeal to the supreme court, and it is allowed. Appeal bond waived.

*Case for supreme court.*

Petition for writ of mandamus to compel the defendants to admit to office the plaintiff, sheriff elect of Moore County, heard before Buxton, J., at fall term, 1868, of Moore superior court.

17 Writ ordered in the alternative, and the defendants appeared and answered. Two of the five expressed a willingness to admit the plaintiff to his office forthwith, but stated that they were overruled by the majority. The other three, constituting a majority of the board, expressed an unwillingness to admit the plaintiff to office, and for cause thereof aver that by a proper construction of 14th article, section 3, of the U. S. Constitution, 4th article, section 30, of the State constitution, act of Congress (reconstruction) ratified 19th July, 1867, particularly sections 6 & 9, acts of gen. assembly of N. C., ratified 21st July, 1868, sec's 8 and 9, coupled with the fact that the plaintiff had been elected, sworn in, and acted as sheriff of Moore both before and during the late war, they had adjudged him under disability, and had declined to admit him to qualify. No objection to the sufficiency of the bond tendered.

18 The plaintiff admitted that he had been elected, sworn in, and acted as sheriff of Moore both before and during the war.

The defendants admitted that the plaintiff had not aided the rebellion otherwise than by accepting and holding the office of sheriff during the war.

The question before his honor was, whether the plaintiff, by reason of his having served both before and during the war, was ipso facto under disability from serving now.

The plaintiff insisted that he was under no disability—

1. For the reason that in holding the office of sheriff before the war he did not hold an executive or judicial office of the State, but merely a ministerial office of the county.

2d. For the reason that, in merely holding and executing the office during the war, he had not engaged in insurrection or rebellion against the United States, or given aid and comfort to the enemies

19 thereof.

The plaintiff also insisted that the commissioners were not made the judges of his right to qualify, but that he was entitled to qualify at the risk of being prosecuted if he did so wrongfully. The defendants maintained the contrary of these propositions.

His honor, upon the case made, adjudged the plaintiff under no disability, so far as the office to which he was elected was concerned, decided the answer and return insufficient, and directed a peremptory writ of mandamus for his admission.

From which ruling and judgment the defendants craved and obtained an appeal to Supreme Court. Bond waived.

August, 1868.

RALPH P. BUXTON, *Judge, &c.*

STATE OF NORTH CAROLINA, *Moore County:*

20 I, A. H. McNeill, clerk of the superior court of law of the county of Moore, do hereby certify that the foregoing is a full, true, and perfect transcript of the record of said court, in the case of Kenneth H. Worthy against John A. Barrett, Wesley F. Seawell, and Calvin H. Smith, county commissioners.

In testimony whereof, I do hereunto subscribe my name and affix the seal of said court at office, in Carthage, this Oct., A. D. 1868.

[SEAL.] A. H. McNEILL, *C. S. C.*

And now, at this time, before the court here, come the parties, by their attorneys, and, on argument of counsel, the following opinion is delivered:

21 North Carolina supreme court.—January term, 1869. 22. Moore Co.

K. H. WORTHY
*vs.*
J. A. BARRETT & OTHERS.

READE, J.:

It is insisted on, for the petitioner, that the county commissioners of Moore County have no power to enquire as to his qualifications; that their duty is to administer to him the oath prescribed by law, and to receive his bond; that this duty is merely ministerial and involves the exercise of no discretion; and that the court will enforce its performance by mandamus, and leave the petitioner's right to hold the office to be tested by proceeding under a quo warranto. The solemn act of administering an oath and inducting into office may not be merely ministerial. But if it were, the court will not compel them to do wrong, if it be clear that they did right.

Our statute provides that "no person prohibited from holding office by section third of the amendment to the Constitution to the United States, known as article fourteen, shall qualify under this act, or hold office in this State." Acts of 1868, chapter 1, section 8.

The fourteenth article of the Constitution of the United States, section 3, is as follows:

"No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as any officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability."

"Senators and representatives in Congress, members of the State legislatures, and all executive and judicial officers, both of the States and of the United States, shall be bound by oath or affirmation to support this Constitution." Article 6, section 3, Constitution of the United States.

The petitioner was a sheriff before and during the rebellion, and the question is, whether he is disqualified from holding the office of sheriff now by reason of the 3d section, 14th article, Constitution of the United States, supra.

The government of the United States is divided into three branches—

legislative, executive, and judicial. These three parts make one whole. There is no other part or parcel.

It follows that there can be no office in the government that is not in one of these departments. There can be no officer except he be the incumbent of an office; therefore there can be no officer except he be in some office in one of these departments. If he is in office in the legislative department, then he is a legislative officer; if in the executive, he is an executive officer; and if in the judicial, he is a judicial officer.

But note: it is not every one who is of these departments that is an officer. Every officer is of these departments, but not vice versa. Members of the legislature are not officers. Theirs are places of trust or profit, but not offices of trust or profit. So in the other departments—as in the judicial, we have judges, sheriffs, clerks, &c., who are officers; and jurors, commissioners, &c., who are placemen. Nor is this a distinction without a difference, for our statute speaks distinctively of offices of trust or profit, and of places of trust or profit. (Revised Code, chap. 77, sec. 1.) And the fourth section of the same is as follows:

"Every officer and other person who may be required to take an oath of office, or an oath for the discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall," &c., &c.; which shows that every person who is called upon to perform public duties, and take an oath to discharge the duties, is not necessarily an officer.

Let us consider:

1. First. Is the sheriff an officer? An office is a right to exercise a public or private employment, and to take the fees and emoluments in which one has a property, and to which there are annexed duties, and, with us, in public offices, oaths to support the Constitutions of the State and of the United States. I do not know how better to draw the distinction between an officer and a mere placeman than by making his oath the test. Every officer is required to take, not only an oath of office, but an oath to support the Constitution of the State and the United States. (Rev. Code, Chap. Oaths.) Whereas every mere placeman is simply required to take an oath to perform the particular duty required of him—as in the case of jurors, commissioners, &c.—and takes no oath to support the Constitution of the State or of the United States.

2. Does the sheriff's office require him to take an oath to support the Constitution of the State and of the United States? Unquestionably it does. "Every member of the general assembly, and every person who shall be chosen or appointed to hold any office of trust or profit in the State, shall, before taking his seat, or entering upon the discharge of the duties of the office, take and subscribe the following oath," &c. (Rev. Code, Chap. Oaths.) Then follows the oath to support the constitution of the State. And the fifth section requires that they shall also take an oath to support the Constitution of the United States.

The following are the officers in North Carolina who are required to take an oath to support the Constitution of the State and of the United States:

Attorney general, State and county solicitors, clerk & master in equity, clerk of the superior court, clerk of the county court, comptroller, constable, coroner, entry taker, governor, inspector of flour and tobacco,
22 &c., judge of the supreme court, judge of the superior court, justices of the peace, public treasurer, ranger, register, secretary of state, sheriff, standard keeper, stray valuers, surveyor for the county, trustee for the county. The foregoing is taken from the Rev. Code,

Chap. Oaths, and to them may be added mayors of towns and cities, upon whom are cast magisterial duties.

Any person who held any of these offices before the rebellion and then engaged in the rebellion, is prohibited from holding office until relieved by Congress.

3. What will amount to having engaged in the rebellion?

(1.) Holding any of these officers under the confederate government.

(2.) Voluntary aiding the rebellion by personal service, or by contributions, other than charitable, of anything that was useful or necessary in the confederate service.

4. Members of the legislature are also excluded from office, although they are not officers by the express terms of the fourteenth article. But the clerks and other employees of the legislature are not excluded. And thence an argument is drawn against the position we have taken; for they say, as only the principal persons in the legislative departments are excluded, it shows that only the principal persons in the other departments were intended. But is not the strength of the argument the other way? For if in terms it is confined to the principal persons in the legislative department, and in terms not confined to the principal persons in the other departments, but extends to "any" —all—why the difference in language unless there was to be a difference in the sense?

We are not called upon to explain why a [a] difference was made, nor do we know that we can give the true reason, but, quere: Are there any officers in the legislative department? The members, the principal persons, are not officers. There are not many persons connected with this department, except the members, and the few that are, are mere placemen. None of their employees are required to take an oath to support the Constitution of the State or of the United States, and no oath of office even is prescribed for them in the Rev. Code, Chap. Oaths, nor elsewhere, so far as we know, nor are we aware that it is usual for them to take any oath at all. But in the other departments all officers are required to take an oath of office, and also an oath to support the Constitution of the State and of the United States, and all mere placemen are required to take an oath of office, or an oath to perform the particular duty required.

In the discussion at the bar the question was considered as if it depended upon whether the officer might not be ministerial, and, in that sense, neither executive nor judicial. That learning is useful when we are considering the questions of the duties and liabilities of officers, but it does not help us here; for though he be ministerial only, yet he is ministerial either in the executive or judicial departments, and his being such, and taking an oath to support the Constitutions, excludes him from office. The oath to support the constitutions is the test; the idea being that one who had taken an oath to support the constitutions and violated it, ought to be excluded from taking it again until relieved by Congress.

Some confusion was caused in the public and in the professional mind, by reason that the Attorney General of the United States was called upon for an opinion, and it was published, as he says, before he had matured it. In that opinion, 24th May, 1867, it was intimated that only the principal State officers, and not the county officers, might be excluded; but on the 12th of June, 1867, he published his considered opinion, and in that he says:

"12. All the executive or judicial officers of any State who took an oath to support the Constitution of the United States are subject to disqualification, and in these I include county officers, as to whom I

make a reservation in the opinion heretofore given. After full consideration I have arrived at the conclusion that they are subject to disqualification if they were required to take, as a part of their official oath, the oath to support the Constitution of the United States.

"13. Persons who exercised mere agencies or employments under State authority are not disqualified, such as commissioners to lay out roads, commissioners of public works, visitors of State institutions, directors of State boards, or other State institutions, notaries public, commissioners to take the acknowledgment of deeds, and lawyers."

There is error in the order for the peremptory mandamus.

Petition dismissed with costs.

NOTE.—The chief justice concurs in regard to the disqualification of the sheriff, but not as to county attorney.

A true copy:

WM. H. BAGLEY, *Clerk.*

*Judgment.*

This cause came on to be argued upon the transcript of the record from the superior court of Moore County, and it is considered and
23 adjudged by the court here that there is error in the order for the peremptory mandamus. It is therefore ordered that the petition be dismissed, and it is further ordered and adjudged that the opinion of the court, as delivered by the Honorable Edwin G. Reade, Jr., be certified to the said superior court, to the intent that further proceedings be had therein accordingly, and it is adjudged further that the plaintiff pay the costs of the appeal in this court incurred.

I, William H. Bagley, clerk of the supreme court of North Carolina, do hereby certify that the foregoing is a full, true, and perfect transcript of the record and papers in the case of K. H. Worthy against John A. Barrett & others, now on file in this office.

In testimony whereof, I do hereunto subscribe my name and affix the seal of said court, at office in Raleigh, this 2d day of December, A. D. 1869.

[SEAL.] WM. H. BAGLEY, *Clerk.*

24 Know all men by these presents, that we, Kenneth H. Worthey and Thomas B. Harris, the latter being of Chatham County, North Carolina, are held and firmly bound to the commissioners of the county of Moore, in State of North Carolina, who are now in office, in the full and just sum of five hundred dollars, ($500 00,) to be paid to them; to which we bind ourselves, our heirs, executors, &c., jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of February, A. D. 1869.

Whereas lately, at a term of the supreme court of North Carolina, and upon the 24th day of February, 1869, in a suit depending in said court between Kenneth H. Worthy and the said commissioners of Moore County, in a petition for a mandamus prosecuted at the instance of said Worthy, judgment dismissing said petition was rendered against said Worthy, and the said Worthy having obtained a writ of error into the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said supreme court of North
25 Carolina, to reverse the judgment in said suit, and a citation directed to said commissioners, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the 1st Monday of December next:

Now the condition of the above obligation is such that if the said Kenneth H. Worthy shall prosecute the said writ of error to effect, and answer all damages and costs if he shall fail to make his said plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) K. H. WORTHY. [SEAL.]
T. B. HARRISS. [SEAL.]

Sealed & delivered in presence of—
WM. H. BAGLEY.

A true copy:
Teste:
[SEAL.] WM. H. BAGLEY, *Clerk.*

(Indorsed:) Kenneth H. Worthy against John A. Barrett and others. Transcript from the supreme court of North Carolina.

(Indorsement on record:) N. Carolina sup. c't. No. 413. Kenneth H. Worthy, plaintiff in error, vs. John A. Barrett, Wesley F. Sewell, Calvin H. Smith, John Ritter, and Absalom Kelly, commissioners of the county of Moore.

Filed 3d January, 1870.

# In the Supreme Court of the United States.

| | | |
|---|---|---|
| KENNETH H. WORTHY, Plaintiff in Error, | | |
| *vs.* | December Term, 1869. | |
| JOHN A. BARRETT, *et al.*, Commissioners of Moore County, N. C., Defendants in Error. | No. 413. | |

BRIEF OF DEFENDANTS IN ERROR.

The writ of error in this case is brought under the 25th section of the judiciary act, to reverse the judgment of the supreme court of North Carolina.

The motion now before the court is, to dismiss the writ of error for want of jurisdiction.

The material facts of the case, necessary to be stated upon this motion, are these:

The plaintiff in error, Worthy, was elected sheriff of Moore county, North Carolina, in April, 1868. Upon his election, he tendered his official bond to the defendants, the commissioners of Moore county, in order that he might qualify as sheriff. The commissioners refused to accept his bond so tendered, and thereupon Worthy applied for a mandamus, requiring the commissioners to accept his bond. In reply to the alternative writ of mandamus, the commissioners justified their refusal to accept plaintiff's bond, on the ground that he was disqualified from holding the office of sheriff by the 3d section of the XIVth amendment of the constitution of the United States. The superior court of Moore county, in which the application for mandamus was originally made, overruled the ground taken by the commissioners, and ordered a peremptory mandamus. From this judgment the commissioners ap-

pealed to the supreme court of North Carolina, which court reversed the judgment of the superior court of Moore county. The supreme court having thus decided in favor of the commissioners, and justified them in refusing to accept the bond of Worthy and permit him to qualify as sheriff, on the ground taken by the commissioners, that Worthy was disqualified by the 14th amendment of the constitution of the United States, the plaintiff in error has brought the case here by writ of error.

Under this state of facts, I submit that the court has no jurisdiction of the writ of error in this case.

1. The 25th section of the judiciary act provides for three classes of cases under which the writ of error may go to review the judgments of State courts.

*a.* Where the *validity* of a treaty or act of Congress, or authority exercised under the United States, is brought in question, and the decision is against such validity. But as it is clear that the *validity* of no treaty, act of Congress, or authority exercised under the United States, has been brought in question and decided adversely, it is evident the writ of error cannot be sustained under this section.

*b.* Where the validity of a statute or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, is drawn in question, and the decision is in favor of such their validity. Evidently, as there has been no question raised in the case of the validity of any law of North Carolina, or authority exercised under the State, within the purview of this clause, the writ of error is not authorized by this clause.

*c.* "Where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission."

If the writ of error can be sustained in this case, it must be under this clause of the 25th section.

2. It is essential, to sustain the jurisdiction under this

clause, that it should appear that the plaintiff in error claimed some right, title, privilege, or exemption, under the constitution, a treaty, or statute of the United States, or an authority exercised under the United States.

The idea of a claim by the plaintiff in error, under a treaty, statute, or authority, is out of the question, and the inquiry is narrowed down to the point, whether he made any claim under the constitution, within the purview of the 25th section.

It is submitted that he did not, and that is the fatal defect in the plaintiff's case here.

3. It is clear, from the inspection of the transcript, that the plaintiff specially set up no claim under the constitution. In his petition for the mandamus, he states his election: that the defendants were the commissioners; that he tendered his bond to them with sufficient sureties; that commissioners refused to accept his bond and allow him to qualify. And the petition and alternative writ of mandamus are the only pleadings in the case in which plaintiff's title is set forth. In this no mention is made of any claim to his office, arising out of the constitution.

And in this connection it is to be noted:

*a.* That, by the rules of pleading, the greatest strickness is necessary in the statement of the relator's case, on application for mandamus.

Selwyn's Nisi Prius, p. 828.
1 Chitty's Practice, 808.
Hoxie *vs.* County Commissioners, 25 Maine, 333.
Moses on Mandamus, p. 206.

*b.* That the third clause of the 25th section of the judiciary act requires that "the title, right, privilege or exemption," "shall be *specially* set up or claimed."

It would seem, therefore, that if the plaintiff claimed any right under the Constitution, it should have been set up by him in some part of his pleadings. But so far as the plaintiff's pleadings are concerned, no claim is set up under the Constitution, or reference made to it.

4. If the plaintiff did set up any claim, it is to be deduced from other portions of the transcript than those in which he presents his case. But the transcript develops a state of facts inconsistent with the idea that the plaintiff set up any claim under the Constitution. The plaintiff's title, as set up by himself in the pleadings, depended entirely on the law of North Carolina. Logically stated, it would consist of five propositions:

*a*. That the law of North Carolina created the office of sheriff.

*b*. That it provided a particular mode of election.

*c*. That, by such mode of election, he was elected.

*d*. That it was necessary to give a certain bond.

*e*. That he was ready to give the bond, and therefore was entitled to the office.

But in all this he makes no claim under the Constitution of the United States. He claims exclusively under the law of North Carolina.

The first and only time we hear of the constitution of the United States in the pleadings in the case is in the return of the Commissioners. They invoke the XIVth amendment as their justification for refusing to permit the plaintiff to qualify as sheriff. The controversy, so far as the constitutional question is concerned, was whether the XIVth amendment justified the commissioners in their refusal to qualify the plaintiff. Under this condition of things, it seems clear that plaintiff set up no claim under the Constitution, within the meaning of the 25th section of the judiciary act.

5. Impossible that the plaintiff could claim under the Constitution. The XIVth amendment confers no right upon any person; it merely takes away the right of a certain class of persons. It is a denying ordinance, not a granting ordinance.

6. The commissioners claim a right under the Constitution to exclude plaintiff from the office of sheriff. If the decision had been against them, they would have been entitled to bring a writ of error. This, while not conclusive, is yet a strong argument against plaintiff's right to a writ of error.

7. The constitutional question involved was, so far as plaintiff in error was concerned, a question of construction, not involving any claim on his part under the Constitution. Under such circumstances he was not entitled to a writ of error.

"It is not every misconstruction of an act of Congress by a State court that will give this court jurisdiction. It is where the party claims upon some title, right," &c.

Austin *vs.* The Aldermen, 7 Wall., 699.

Commercial Bank *vs.* Buckinham's Ex's, 5 How., 317.

8. Attention is invited to the case of Menard *vs.* Aspasia, 5 Peters, 516, as being the most analogous to this of any of the reported cases.

That case is as follows:

"The mother of Aspasia, a colored woman, was born a slave at Kaskaskia, in Illinois, previous to 1787, and before that country was conquered from Virginia. Aspasia was born in Illinois subsequent to the passage of the ordinance for the government of that territory. Aspasia was afterwards sent as a slave to the State of Missouri. In Missouri Aspasia claimed to be free, under the ordinance 'for the government of the territory of the United States northwest of the Ohio river," passed July 13, 1787. The supreme court of Missouri decided that Aspasia was free, and Menard, who claimed her as his slave, brought a writ of error under the 25th section of the act of 1789, claiming to reverse the judgment of that court."

The court say: "His (the plaintiff's) title did not arise under an act of Congress. This is essential to give jurisdiction under this head. It is not enough to give jurisdiction that the act of Congress *did not take away a right which previously existed. Such an act cannot be said to give the right, though it may not destroy it.*

"If the decision had been against Aspasia, it might have been contended that the reversing power of this court under 25th section of the judiciary act could be exercised. But the reason was not against but in favor of the ordinance."

"The right asserted by the plaintiff in error had not its origin under any express provision of the ordinance. It is only contended that the instrument did not destroy this right which had its commencement in other laws.

9. Whatever right the plaintiff has to the office he claims

arises from the law of North Carolina, and it is not protected by the Constitution, therefore the writ of error does not lie in his behalf.

"Where a right springs from some other source (than from federal authority) in order to gain the jurisdiction it is necessary that it should be protected by the Constitution, or a treaty, or act of Congress."

Curtis U. S. Courts, p. 379.

City of New Orleans *v.* De Armas, 9 Pet., 224, 233.

10. The plaintiff in error only objected to the right claimed by defendants, under the XIVth amendment, to refuse to permit him to qualify as sheriff, but claimed no right under the United States; the decision of the State court, in favor of defendants, therefore gave no ground for a writ of error.

"Where one objected to the validity of the title claimed by defendants in error, but claimed no right under the United States, the decision of the State court in favor of defendant in error gave no foundation for a writ of error."

Burke *v.* Gaines, 19 Howd., p. 389.

11. No case authorizing the writ of error in this case to be found in the reports.

12. The purpose of the jurisdiction to insure the supremacy of the federal authority.

This purpose does not require the court to take jurisdiction in such a case as this.

W. W. BOYCE,

*Counsel for defendants in error.*

# Supreme Court of the United States.

DECEMBER TERM, 1869.

KENNETH H. WORTHEY, Plaintiff in Error,

*vs.*

JOHN A. BARRETT *et al.*, Commissioners of Moore County, North Carolina, Defendants in Error.

No. 413.

BRIEF OF PLAINTIFF IN ERROR.

1. Cases involving rights that are *protected* only by the court of the United States, come within the appellate jurisdiction of the Supreme Court, no matter whence the rights may *spring*.

2. Worthey's rights were originated in the State constitution, Art. VI, §§ 1, 4, and 5, but are *protected* by the United States court, sec. 1 of XIVth amendment.

We support 2 as follows:

By the court of North Carolina, the right of holding office is (with exceptions not here material) co-extensive with the "elective franchise," and therefore falls within the category of "immunities and privileges" of the citizens of the United States within this State. (See the well considered and often cited case of Corfield *vs.* Coryell, 4 Wash. C. C., 380, appa-

rently approved by Cooley, 16 n., Sedgwick, Court., and Stat. Law, 601, and Kent 2, 72.) I do not find it questioned anywhere.

Whatever the State law confers as a personal right upon "citizens of the United States," whether it use the word *citizens*, or only use terms which define that word; and whether it use such word or terms unqualifiedly or with limitations of detail, is protected by the XIVth amendment in the same manner, state, quality, and condition that it is given.

[Corollary, not necessary here. As certain privileges are not everywhere *given* by the States, the XVth amendment is proposed.]

3. Section 3 of the XIVth amendment is by way of exception from section 1.

Every one who, *prima facie*, is included in section 1 has a right to have a State decision infringing those privileges reviewed by the Supreme Court of the United States.

The North Carolina supreme court has decided, in effect, that the right to hold office by one formerly sheriff is taken away by section 3, XIVth amendment. This is an assault upon an immunity and privilege granted to us by section 1. We have a right to know how far this guaranty extends; to complain at Washington that it has been insufficiently administered at Raleigh.

The exaggeration of an exception in a constitutional provision as effectually defeats the provision excepted from as if the latter were expressly infringed.

The constitution of North Carolina defines qualifications for office, artitle XI, secs. 1, 4, and 5.

"SEC. 4. Every voter, except as hereinafter provided, shall be eligible to office."

Section 5 gives the exceptions: "1. Persons denying the existence of Almighty God. 2. Persons convicted of treason, perjury, or other infamous offence."

Section 1 defines voters: "Every male person born in the United States or naturalized on twelve months' residence in the State, and a thirty days' residence in the county."

It is submitted, therefore, that the act of the State of North Carolina, prohibiting any person from holding office who was disqualified by section 3, XIVth amendment of Constitution of United States, has no effect, except so far as sanctioned by the Constitution of the United States, art. XIV. It cannot enforce a disability, although, perhaps, it may affix a penalty upon one of those already disabled by XIVth amendment. The word, perhaps, is used, in case it be held hereafter that the clause giving Congress power to enforce the amendment was intended to confer an exclusive power.

A. W. SHEFFER,
*Counsel for Plaintiff in Error.*